

No. 2824—L. C.; Bangalore dated 9th December 1937.

Under Rule 8 of the rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill further to amend the Mysore Limitation Regulation, 1911, is published for general information with the statement of objects and reasons.

By Order,

A. SUNDARARAJA RAO,

Secretary,

Mysore Legislative Council.

Bill further to amend the Mysore Limitation Regulation, 1911.

Whereas it is expedient further to amend the Mysore Limitation Regulation, 1911; it is hereby enacted as follows:—

1. (1) This Regulation may be called the Mysore Limitation (Amendment) Regulation, 1937.

Short title and commencement.

(2) It shall come into force on the first day of

2. In section 5 of the Mysore Limitation Regulation, 1911 (hereinafter referred to as the said Regulation), for the words "by any enactment or rule" the words "by or under any enactment" shall be substituted.

Amendment of Section 5.

3. In section 10 of the said Regulation, the following paragraph shall be inserted, namely:—

Amendment of section 10.

"For the purposes of this section any property comprised in a Hindu, Mahomedan or Buddhist religious or charitable endowment shall be deemed to be property vested in trust for a specific purpose and the manager of any such property shall be deemed to be the trustee thereof."

4. For section 29 of the said Regulation, the following shall be substituted, namely:—

Amendment of Section 29.

"29 (1) Nothing in this Regulation shall affect section 25 of the Indian Contract Act, 1872, as in force in Mysore;

(2) where any special or local law prescribes for any suit, appeal or application a period of limitation

different from the period prescribed therefor by the First Schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law,

- (a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as and to the extent to which, they are not expressly excluded by such special or local law; and
- (b) the remaining provisions of this Regulation shall not apply."

Addition of
Articles 48-A
and 48-B.

5. In the first division of the First Schedule to the said Regulation, after Article 48; the following articles shall be inserted, namely:—

48-A. To recover movable property conveyed or bequeathed in trust, deposited or pawned, and afterwards bought from the trustee, depository or pawnee for a valuable consideration.	Three years	When the sale becomes known to the plaintiff.
48-B. To set aside sale of movable property comprised in a Hindu, Mahomedan or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration.	Three years	When the sale becomes known to the plaintiff.

Amendment
of Art. 132.

6. To Article 132 in the First Division of the First Schedule to the said Regulation, the following explanation shall be added, namely:—

"*Explanation.*—Advances secured by mortgage by deposit of title deeds shall, for the purposes of this article, be deemed to be money charged upon immovable property."

Amendment
of First
Schedule.

7. In the First Division of the First Schedule to the said Regulation:—

- (a) Article 133 shall be omitted.
- (b) In Article 134, in the third column, for the words "The date of the transfer" the words "when the transfer becomes known to the plaintiff" shall be substituted; and

(c) After Article 134, the following articles shall be inserted, namely :—

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| 134-A. To set aside a transfer of im-
movable property comprised
in a Hindu, Mahomedan or
Buddhist religious or charit-
able endowment made by a
manager thereof for a valu-
able consideration. | Twelve
years. | When the transfer
becomes known
to the plaintiff. |
| 134-B. By the manager of a Hindu,
Mahomedan or Buddhist
religious or charitable en-
dowment, to recover posses-
sion of immovable property
comprised in the endowment
which has been transferred
by a previous manager for a
valuable consideration. | Twelve
years | The death, resigna-
tion or removal
of the transferor |
| 134-C. By the manager of a Hindu,
Mahomedan or Buddhist
religious or charitable en-
dowment to recover posses-
sion of movable property
comprised in the endowment
which has been sold by a
previous manager for a
valuable consideration. | Twelve
years | The death, resigna-
tion or removal
of the seller. |

8. In the Third Division of the First Schedule to the said Regulation, in Article 158 in the third column, for the words "when the award is submitted to the court," the words "when the award is filed in court and notice of the filing has been given to the parties" shall be substituted. Amendment
of Art. 158.

9. In the Third Division of the First Schedule to the said Regulation in Article 166 in the first column, the words "or fraud" shall be inserted after the word "irregularity." Amendment
of Art. 166.

10. In the Third Division of the First Schedule of the said Regulation, (a) in Articles 176 and 177 in the second column for the word "ditto" appearing against each article the words "Ninety days" shall be substituted; and (b) in Article 178 in the second column for the word "Ditto" the words "six months" shall be substituted. Amendment
of Arts. 176,
177 and 178.

Statement of Objects and Reasons.

In the judgment of the High Court in Motiram Lala vs. Deputy Commissioner and Muzrai Officer, Mysore

District (40 Mys. H. C. R. 330), it was suggested that section 29 of the Limitation Regulation may be amended as in British India so as to make most of the exceptions and qualifications to section 3 of the Limitation Regulation apply not only to the periods of limitation prescribed by that Regulation but to periods of limitation prescribed by other Regulations. Before the amendment in British India in 1922, section 29 was the same as here. It provided that nothing in the Limitation Act shall affect or alter any period of limitation specially prescribed for any suit, appeal or applications by any special or local law. The interpretation of this provision was the subject of conflicting decisions by High Courts, some holding that the application of the general provisions of Limitation Act would be to affect the period of limitation prescribed under the special law and others holding a contrary view. To remove this conflict, section 29 of the British Indian Act was amended by Act X of 1922. As suggested by the High Court in the judgment cited above, it is proposed to amend section 29 of the Mysore Regulation as in British India (*Vide* clause 4). While amending section 29 opportunity is taken to bring the Mysore Regulation into line with the Act in British India so far as it is suitable.

The chief of such amendments are explained below:—

Clause 2.—The change is verbal and better expresses the intention of the section.

Clause 3.—Recent decisions of courts have taken the view that whenever property is conveyed to a religious or charitable institution, it is not held by the manager thereof as trustee. He holds it only as manager and the property does not vest in him in trust, with the result that suits against him in respect of the property of the endowments of this nature are not governed by section 10 of the Limitation Regulation. Section 10 is therefore amended so as to put property of Hindu and Mahomedan religious endowments on the same footing as other trust property which definitely vest in a trustee.

Clause 5.—The provisions of Article 133 are enacted as Article 48-A with the period of limitation curtailed to three years. Specific provision is made by Article 48-B for the case of a suit to set aside sales of movable property comprised in a religious or charitable endowment where the plaintiff is merely interested in the endowment as a

beneficiary, but is not entitled to possession. The date when the plaintiff obtains knowledge of the sale he seeks to attack is the most suitable date from which limitation should run. If limitation runs from the date of purchase or even from the date of delivery of possession, a dishonest trustee and a collusive transferee might conceal the fact until the period of limitation expires. With this change it is considered that a period of three years in the case of movable property is quite sufficient.

Clause 6.—As it is not definite what period of limitation should govern a suit to recover money due on a mortgage by the deposit of title deeds, provision is now made therefor by fixing a period of 12 years in such cases.

Clause 7.—The notes to clause 5 explain the reason for deleting Article 133 which is enacted as Article 48-A. As the manager of a religious or charitable institution is not a trustee, Articles 133 and 134 as they stand would not be applicable to such institutions. This would also be in consonance with Order XXI, Rule 90 of C. P. C. in which an application to set aside a sale on the ground of fraud is placed on the same footing as an application to set aside a sale on the ground of material irregularity. It is proposed to bring religious or charitable endowments within the scope of the principle of Articles 133 and 134. Suits by persons interested in the endowment to set aside alienations made by the manager are provided for in Article 48-B in respect of movable property, and in Article 134-A for immovable property. In the case of suits by the manager himself attacking transfers made by a predecessor for valuable consideration and claiming to recover the property, provision is made by special Articles 134-B and 134-C. For reasons stated in the notes to clause 5, the starting point in Articles 134 and 134-A is proposed to be taken as the date of the plaintiff's knowledge of the transfer. It is also proposed to take as the starting point for Articles 134-B and 134-C the death, resignation or removal of the transferring manager. The period of limitation of 12 years which is normal in all similar cases is adopted for Articles 134-A, 145-B and 134-C.

Clause 8.—Reading Article 158 along with paragraph 10, Second Schedule, C. P. C., it is desirable to make it definite that time will run from the day on which the parties receive notice that the award has been filed in court.

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Clause 9.—In interpreting this article, decisions are not uniform whether fraud in publishing or conducting a sale would come within the scope of this article or not. It is proposed to make it clear that an application to set aside a sale on the ground of fraud in publishing or conducting a sale is governed by Article 166.

Clause 10.—The time now allowed to bring the legal representative of a deceased party on record is six months. This is considered too long and it is proposed to reduce it to ninety days. This will help in reducing the delay in the disposal of suits. The reduction will not affect parties who are diligent. The apprehension that the change will prove a hardship to parties who will find it difficult to ascertain the address of the legal representatives, has no force. What is required is that an application mentioning the legal representative should be filed in court. Delay in the service of summons owing to difficulty in ascertaining the address is sufficiently protected under the Civil Procedure Code.

No. 2825—L. C., Bangalore dated 9th December 1937.

Under Rule 8 of the rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill to amend the Transfer of Property Regulation for certain purposes is published for general information with the statement of objects and reasons.

By Order,

A. SUNDARARAJA RAO,

Secretary,
Mysore Legislative Council.

**Bill to amend the Transfer of Property Regulation for
certain purposes.**

Short title and
commence-
ment.

Whereas it is expedient to amend the Transfer of Property Regulation, 1918, for the purposes hereinafter appearing; it is hereby enacted as follows:—

1. (1) This Regulation may be called the Transfer of Property (Amendment) Regulation, 1937.